

A BALLOT INITIATIVE FOR AN ACT ENTITLED: "AN ACT LEGALIZING AND REGULATING THE USE OF MARIJUANA; ESTABLISHING DUTIES OF THE DEPARTMENT OF REVENUE; REVISING CRIMINAL LAWS RELATED TO MARIJUANA; CREATING A SPECIAL REVENUE FUND; PROVIDING PENALTIES; ESTABLISHING A TAX ON MARIJUANA SALES; PROVIDING DEFINITIONS; PROVIDING FOR DISTRIBUTION OF REVENUE FROM THE MARIJUANA TAX TO VARIOUS STATE PROGRAMS AND LOCAL GOVERNMENT ENTITIES; ALLOWING CERTAIN MUNICIPALITIES, COUNTIES, AND CONSOLIDATED CITY-COUNTY GOVERNMENTS BY A VOTE OF THE ELECTORATE TO ADOPT A LOCAL OPTION TAX ON MARIJUANA; PROVIDING A STATUTORY APPROPRIATION FOR DISTRIBUTION OF A PORTION OF THE TAX TO LOCAL GOVERNMENT ENTITIES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE PEOPLE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 40] may be cited as the "Marijuana Regulation Act".

NEW SECTION. Section 2. Purpose. (1) In the interest of allowing law enforcement to focus on violent and property crimes, generating revenue for education and other purposes, and individual freedom, the state of Montana finds and declares that the use of marijuana should be legal for persons 19 years of age or older.

(2) In the interest of the health and public safety of our citizenry, the state further finds and declares that marijuana should be regulated so that:

- (a) individuals will be required to show proof of age before purchasing marijuana;
- (b) selling, distributing, or transferring marijuana to minors will remain illegal;
- (c) driving under the influence of marijuana will remain illegal;
- (d) the production, distribution, and sale of marijuana will be conducted by legitimate and taxpaying businesses; and
- (e) marijuana sold in this state will be tested, labeled, and subject to additional regulations to ensure that consumers are informed and protected.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 40], the following definitions apply:

(1) (a) "Advertisement" means a statement or a depiction that is intended to induce the sale of an item and that is displayed in printed material or on a sign or other outdoor display or presented in a radio, television, or other media broadcast or in digital media.

(b) The term does not include:

- (i) a sign or outdoor display or other statement permanently affixed to a licensed premises that is intended to induce the sale of a marijuana product produced or sold on the premises;
- (ii) a label affixed to a marijuana product or the covering, wrapper, or container of a marijuana product; or

(iii) an editorial or other material printed in a publication when the publication of the editorial or material was not paid for by a licensee and was not published by or at the direction of a licensee.

(2) "Advertising" means the publication or dissemination of an advertisement.

(3) (a) "Commercial marijuana activity" means the cultivation, production, possession, manufacture, storage, testing, labeling, transportation, couriering, and sale of marijuana and marijuana products.

(b) The term does not include activities related only to the Montana Medical Marijuana Act or to personal production.

(4) "Consumer" means a person who purchases, acquires, owns, possesses, or uses a marijuana product for a purpose other than resale.

(5) (a) "Controlling person" means an officer or board member in a marijuana establishment.

(b) The term does not include a bank or licensed lending institution.

(6) "Department" means the department of revenue as provided in 2-15-1301.

(7) "Director" means the director of the department.

(8) "Evidence-based drug education program" means a research- and scientific-evidence-based education program that has been thoroughly tested and has been shown to significantly reduce problematic use of substances such as nicotine, alcohol, or drugs.

(9) (a) "Financial consideration" means the value that is given or received, directly or indirectly, through sales, barter, trade, fees, charges, dues, contributions, or donations.

(b) The term does not mean the value in homegrown marijuana produced or homemade marijuana products manufactured by another person.

(10) "Homegrown" or "homemade" means grown or made by a person for purposes that are not dependent or conditioned on the provision or receipt of financial consideration.

(11) "Household" means a housing unit and includes any place in or around the housing unit at which an occupant of the housing unit produces, manufactures, keeps, or stores homegrown marijuana or homemade marijuana products.

(12) "Housing unit" means a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters in which an occupant lives and eats separately from any other person in the building who does not occupy the same housing unit and that includes direct access from the outside of the building or through a common hall.

(13) "Immature marijuana plant" means a marijuana plant that has no observable flowers or buds.

(14) "Licensed premises" means a location that is licensed pursuant to [sections 1 through 40] and includes:

(a) all enclosed public and private areas at the location that are used in the business operated pursuant to a license, including offices, kitchens, restrooms, and storerooms;

(b) all areas outside of a building that the department has specifically licensed for the production, manufacturing, wholesale sale, or retail sale of marijuana products; and

(c) with respect to a location that the department has specifically licensed for the production of marijuana outside of a building, the entire unit of land that is created by subsection or partition of land that the licensee owns, leases, or has a right to occupy.

(15) "Licensee representative" means an owner, director, officer, manager, employee, agent, or other representative of a licensee, to the extent that the person acts in a representative capacity.

(16) "Local jurisdiction" means a municipality, home rule municipality, or county.

(17) (a) "Manufacture" means to compound, blend, extract, infuse, or otherwise prepare a marijuana product.

(b) The term does not include producing the marijuana contained in a marijuana product.

(18) (a) "Marijuana" means:

(i) all parts of the plant *Cannabis sativa* L. containing a delta-9-tetrahydrocannabinol concentration of more than 0.3% on a dry weight basis, whether growing or not;

(ii) the seeds of the plant;

(iii) the resin extracted from any part of the plant; or

(iv) every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin.

(b) The term does not include:

(i) the mature stalks of the plant;

(ii) fiber produced from the stalks;

(iii) oil or cake made from the seeds of the plant;

(iv) any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake;

(v) the sterilized seed of the plant that is incapable of germination; or

(vi) the weight of any other ingredients combined with marijuana to prepare topical or oral administration, food, drink, or another product.

(19) "Marijuana consumption area" means an area within a marijuana retailer's licensed premises where marijuana products may be consumed.

(20) "Marijuana courier" means a person licensed by the department only to transport usable marijuana and marijuana products directly to consumers.

(21) "Marijuana establishment" means a:

(a) marijuana courier;

(b) marijuana testing laboratory;

(c) marijuana manufacturer;

(d) marijuana microbusiness;

(e) marijuana producer;

(f) marijuana retailer; or

(g) marijuana lounge

(22) (a) "Marijuana extract" means a product obtained by separating resins from marijuana by solvent extraction using solvents other than vegetable glycerin, such as butane, hexane, isopropyl alcohol, ethanol or carbon dioxide.

(b) The term does not include the weight of any other ingredients combined with marijuana extract to prepare topical or oral administration, food, drink or another product.

(23) "Marijuana flowers" means only the flowers of a marijuana plant.

(24) "Marijuana manufacturer" means a person that is licensed by the department to:

(a) manufacture marijuana products;

(b) package, transport, or courier marijuana products;

- (c) have marijuana products tested by a marijuana testing laboratory; or
- (d) sell and transport marijuana products to other marijuana establishments.

(25) "Marijuana microbusiness" means a person that employs fewer than 9 people, collects no more than \$2 million in annual revenue, and is licensed by the department to:

- (a) produce up to 99 mature marijuana plants;
- (b) manufacture marijuana extracts using nonvolatile solvents or no solvents;
- (c) be a marijuana retailer;
- (d) sell, transport, or courier the marijuana products to other marijuana establishments and to consumers; or
- (e) engage in any other activity authorized by the department.

(26) "Marijuana producer" means a person that is licensed by the department to:

- (a) produce marijuana;
- (b) package marijuana products;
- (c) have marijuana products tested by a marijuana testing laboratory; and
- (d) sell and transport marijuana products to other marijuana establishments.

(27) (a) "Marijuana product" means a product that contains marijuana, marijuana infusions, or marijuana extracts, including edible or topical products that may also contain other ingredients.

(b) The term does not include the weight of any other ingredients combined with marijuana or marijuana extracts to prepare topical or oral administration, food, drink, or another product.

(28) "Marijuana retailer" means a person that is licensed by the department to sell and courier marijuana products to a consumer in this state.

(29) "Marijuana testing laboratory" means a facility that is licensed by the department to collect, transport, and test marijuana products to analyze the strength or purity of the products.

(30) "Marketing" means the act of promoting or selling a marijuana product or marijuana-related products or services.

(31) "Mature marijuana plant" means a marijuana plant that is not an immature marijuana plant.

(32) "Medical marijuana" means marijuana products used by a registered cardholder in accordance with the Montana Medical Marijuana Act.

(33) "Medical marijuana program" means the regulated system allowing for the use of marijuana for debilitating medical conditions as established in the Montana Medical Marijuana Act.

(34) "Person" means an individual or a firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, or any other legal or commercial entity.

(35) "Personal production" means the individual produces marijuana for the individual's personal use in accordance with [sections 1 through 40].

(36) "Produce" means to undertake any activity involving the cultivation of marijuana.

(37) "Public place" means a place to which the general public has access and includes:

- (a) hallways, lobbies, and other parts of apartment houses and hotels that do not constitute rooms or apartments designed for actual residence;
- (b) highways and streets;
- (c) schools;

- (d) parks, playgrounds, and places of amusement; and
- (e) places used in connection with public passenger transportation.

(38) "Registered cardholder" means a Montana resident eligible for a registry identification card under the Montana Medical Marijuana Act.

(39) "Registry" means the registry operated by the department of public health and human services pursuant to the Montana Medical Marijuana Act.

(40) "Safety-sensitive position" means a position in which performance by a person under the influence of drugs or alcohol would constitute an immediate and direct threat of injury or death to that person or to another.

(41) "Usable marijuana" means dried marijuana flowers or dried marijuana leaves or any mixture or preparation of those flowers or leaves.

(42) "Volatile solvent" means a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures.

NEW SECTION. Section 4. Department duties -- rulemaking -- advisory committee. (1) The department shall regulate, administer, and collect fees in connection with the administration of commercial marijuana activity and licensing related to the activity.

(2) The department shall adopt rules no later than April 1, 2021, to carry out its duties under [sections 1 through 40]. The rules must include:

- (a) procedures for the issuance, renewal, suspension, and revocation of a license;
- (b) qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment;
- (c) security requirements for a marijuana establishment;
- (d) requirements related to:
 - (i) inspection and monitoring of a marijuana establishment;
 - (ii) a marijuana establishment's recordkeeping and tracking of marijuana from seed until it is sold;
 - (iii) prevention of the sale or diversion of marijuana products in commercial marijuana activity to a person under the age of 18;
- (iv) labeling of marijuana products packaged, sold, or distributed by a marijuana establishment; and
- (v) language for labels of marijuana products related to potential adverse effects;
- (e) the additional products, if any, that a licensee who sells marijuana products may sell;
- (f) the advertising and marketing a licensee may conduct and the manner in which a licensee may display marijuana products for sale;
- (g) rules developed in consultation with the department of agriculture, the department of public health and human services environmental lab, and the department of environmental quality to establish:
 - (i) health and safety standards applicable to the cultivation of marijuana and the manufacture of marijuana products;
 - (ii) standards for quality control, inspection, and testing of marijuana products;
 - (iii) standards for food and product safety applicable to marijuana products; and
 - (iv) the additives and ingredients that are approved for or prohibited from inclusion in marijuana products; and

(h) rules developed in consultation with the department of agriculture, the department of health and human services environmental lab and the department of environmental quality to establish:

- (i) standards for the use of pesticides in the manufacture of marijuana, including the maximum allowances for pesticides and other foreign material such as hair, insects, or other similar adulterants in harvested marijuana;
- (ii) environmental protections that apply to all licensees;
- (iii) protocols to ensure licensees' compliance with state laws governing environmental impacts, natural resource protection, water quality, water supply, hazardous materials, pesticide use, and wastewater discharge; and
- (iv) occupational health and safety standards for persons working in the marijuana industry.

(3) (a) No later than January 1, 2021, the department shall convene an advisory committee to advise the department on the development of rules pursuant to [sections 1 through 40], including best practices and guidelines that protect public health and safety while ensuring a regulated environment for commercial marijuana activity that does not impose unreasonable barriers that would perpetuate, rather than reduce and eliminate, the illicit market for marijuana.

(b) The director of the department shall appoint the advisory committee members to serve 2-year terms. The committee must include a representative:

- (i) of the marijuana industry;
- (ii) of a marijuana policy advocacy organization;
- (iii) of a labor organization;
- (iv) who is a registered patient cardholder;
- (v) from a state or local agency with relevant expertise;
- (vi) with expertise in the practice of the Montana Annotated Code
- (vii) with expertise in regulating commercial activity for adult-use intoxicating substances; and
- (viii) with expertise in other relevant areas.

(c) Beginning January 1, 2023, the advisory committee shall publish and provide to the legislature, in accordance with 5-11-210, an annual report detailing the committee's activities and recommendations during the preceding year and noting whether the department implemented the recommendations. The report must include a recommendation on whether the legislature should adjust the marijuana excise tax based on the following considerations:

- (i) demand for marijuana products;
- (ii) undercutting the illicit marijuana market;
- (iii) preventing the marijuana market from undercutting the medical marijuana market;
- (iv) preventing marijuana use by a person younger than 18 years of age; and
- (v) preventing marijuana use disorder.

(c) Members of the advisory committee may not be paid but are entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503.

NEW SECTION. Section 5. Department of public health and human services -- duties -- public health and safety advisory committee. (1) The department of public health and human services shall monitor emerging scientific and medical information relevant to the health effects associated with marijuana use and shall monitor changes in marijuana use patterns for children and adults within the state.

(2) No later than January 1, 2021, the director of the department of public health and human services shall appoint a public health and safety advisory committee composed of professionals who have gained expertise related to marijuana through their work, training, or research in public health, epidemiology, medicine, medical toxicology, poison control, road safety, occupational safety, environmental safety, or emergency medicine.

(3) Beginning on September 1, 2022, the public health and safety advisory committee shall provide to the legislature in accordance with 5-11-210, and the department of public health and human services shall publish on its website, an annual report on the health effects of legalizing marijuana for adult use. The report must include the following elements relating to marijuana use:

- (a) access of minors to marijuana;
- (b) road safety and driving while impaired;
- (c) workplace safety;
- (d) the percentage of emergency room visits and outcomes;
- (e) educational needs for children and adults;
- (f) consumer and product safety; and
- (g) percentage of poison control center calls.

(4) Public members of the committee may not be paid but are entitled to reimbursement of expenses as provided in 2-18-501 through 2-18-503.

NEW SECTION. Section 6. Department of justice -- reporting requirements. (1) Within 60 days following the end of every fiscal year, every police and sheriff's department shall report on a form approved by the department of justice:

(a) the total number of arrests and citations for marijuana-related violations broken down by category and penalty level; and

(b) the number of motor vehicle accidents in which the driver responsible for the accident tested positive for marijuana only.

(2) Each law enforcement agency shall submit its annual report to the department of justice. A law enforcement agency that does not issue a citation or make an arrest for a marijuana law violation shall report that fact in its annual report.

(3) The department of justice shall compile the reports submitted and shall issue by November 1 of each year an annual report of all marijuana law violations in the state. The department of justice shall make all annual reports submitted for previous fiscal years available on the department's website.

NEW SECTION. Section 7. Licensing -- limitations. (1) The department shall administer a licensing program for commercial marijuana as allowed under [sections 1 through 40]. The department may issue the following licenses:

- (a) marijuana courier;
- (b) marijuana manufacturer;
- (c) marijuana microbusiness;
- (d) marijuana producer;
- (e) marijuana retailer;
- (f) marijuana testing laboratory;

- (g) marijuana lounges;
- (2) The department shall include a clear designation on all licenses that indicates whether the license is for commercial marijuana activity, or medical marijuana activity, or for both medical and commercial marijuana activity.
- (3) The department may designate subcategories of licenses based on:
 - (a) the size of a business; or
 - (b) for marijuana producers, whether the marijuana is produced indoors, outdoors, or in a setting that combines natural light with other light sources.
- (4) (a) The department shall begin issuing licenses no later than April 1, 2021.
- (b) The department may issue temporary licenses until September 1, 2021, or longer if the department determines necessary.
- (5) A license is valid for 12 months from the date it is issued and may be renewed annually.
- (6) A marijuana testing laboratory may not hold any other license allowed under [sections 1 through 40].
- (7) Only a marijuana retailer, lounge, or a marijuana microbusiness may operate a marijuana consumption area.
- (8) The department may not issue a license to a natural person who cannot demonstrate continuous residency in this state for at least 2 years prior to the date on which the person submits a license application. If an applicant is an entity, all controlling persons in the entity must be required to demonstrate continuous residency in this state for 2 years prior to the date on which the entity submits its license application.
- (9) Except as provided in [section 9] and subsection (6) of this section, the department may not limit the type or number of licenses that a licensee may be issued under [sections 1 through 40].

NEW SECTION. Section 8. Licensees -- intermediate sanctions -- civil penalty. (1) (a) A violation of a provision of [sections 1 through 40] or a rule adopted to carry out the provisions of [sections 1 through 40] is grounds for disciplinary action. The department may:

- (i) impose any intermediate sanction established by rule;
 - (ii) impose a directed plan of correction; or
 - (iii) assess a civil monetary penalty established by rule but not to exceed \$1,000 for each violation.
- (b) Penalties and interest recovered pursuant to [sections 1 through 40] must be deposited in the dedicated marijuana state special revenue account established in [section 50].
- (2) The department shall adopt rules specifying the criteria for imposing any intermediate sanction or civil monetary penalty.
- (3) A licensee is liable for the reasonable costs of a directed plan of correction.

NEW SECTION. Section 9. Commercial marijuana activity licensing -- temporary licenses -- application -- issuance and denial of licenses. (1) Beginning no later than April 1, 2021, the department shall issue a temporary license to conduct commercial marijuana activity to an applicant that meets the requirements established in [sections 1 through 40] and by the department by rule.

- (2) In carrying out its licensing duties, the department shall:

(a) no later than January 1, 2021, accept and begin processing license applications; and
(b) issue a license, or a written notice detailing why an application was denied, no later than 90 days following the day on which the application was submitted to the department.

(3) The department may deny an application for an initial license or renewal if:

(a) the application does not include all information required by the department;
(b) issuance of the license would lead to monopolization of the recreational marijuana or medical marijuana industry in the state or would unreasonably restrain competition in those industries

(4) If a controlling person and the applicant entity were convicted of an offense substantially related to the qualifications, functions, or duties of the entity's business but are otherwise qualified for a license and issuing a license to the applicant entity would not compromise public safety, the department shall conduct a thorough review of the conviction, including the nature of the offense, the surrounding circumstances, and any evidence of the controlling person's rehabilitation following the conviction to determine whether the applicant entity should be issued a license.

(5) (a) For the purposes of subsection (3), the following are considered substantially related to the qualifications, functions, or duties of a business seeking a license:

(i) a felony conviction involving fraud, deceit, or embezzlement;
(ii) a felony conviction for hiring, employing, or otherwise using a person younger than 18 years of age to:

(A) prepare for sale, transport, or carry a controlled substance; or
(B) sell, give away, or offer to sell a controlled substance to any person; and
(iii) except as provided in subsection (5)(b), any other offense as determined by the department.

(b) A conviction for which the related sentence, including any term of probation or parole, has been completed for the possession, use, manufacture, distribution, or dispensing of a controlled substance or for the possession of a controlled substance with the intent to manufacture, distribute, or dispense the controlled substance is not considered substantially related to the qualifications, functions, or duties of a business seeking a license and may not be the sole ground on which an application is denied.

(6) The department shall deny an application if the applicant, a controlling person in the applicant's entity, or the premises for which a license is sought do not qualify for licensure under [sections 1 through 40].

NEW SECTION. Section 10. Phase in licensing for 2 year residents

1. The department will issue licenses in the following phases:

(a)Phase 1: Jan. 2021-July 21

Current mmj license holders

(b)Phase 2: July '21-Dec '21

Any two year resident who has been an approved Montana mmj provider in the past or employee of the mmj program and any two year resident who has been arrested for marijuana in the past must be at least 51% owner receiving 51% of profits.

(c)Phase 3 will be determined by the advisory council

NEW SECTION. Section 11. Licensing fees. (1) The department shall establish application and licensing fees for commercial marijuana activity and personal production. The fees must be:

(a) reasonably calculated to cover the costs of administering and enforcing the provisions of [sections 1 through 40]; and

(b) scaled to reflect the size of a business seeking or renewing a license, and

(c) may not exceed \$5,000

(2) The department shall deposit all license fees in the dedicated marijuana state special revenue account established in [section 50].

NEW SECTION. Section 12. Local control. (1) A local jurisdiction may:

(a) adopt reasonable time, place, and manner rules that do not conflict with [sections 1 through 40];

(b) prohibit, in accordance with the provisions of [sections 1 through 40], the operation of a marijuana retailer, lounge or a marijuana microbusiness that sells marijuana products; and

(c) allow for the smoking, vaporizing, and ingesting of marijuana products within an indoor or outdoor marijuana consumption area on the premises of a marijuana retailer, marijuana lounge, or marijuana microbusiness if:

(i) access to the marijuana consumption area is restricted to persons 19 years of age or older;

(ii) marijuana consumption is not visible from any public place or from outside the marijuana consumption area; and

(iii) the marijuana retailer, marijuana lounge, or marijuana microbusiness is located at a minimum distance of 500 feet from a school.

(2) A local government may not:

(a) prevent transportation of marijuana products on public roads by a licensee that transports marijuana products in compliance with [sections 1 through 40];

(b) completely prohibit the operation of any category of license other than a marijuana retailer or marijuana microbusiness that sells marijuana products;

(c) prohibit the personal production of marijuana or marijuana products made without the use of volatile solvents for personal use; or

(d) prohibit the operation of a medical marijuana-only retail business.

(3) Violation of a health-related or safety-related rule involving homegrown marijuana is a civil offense.

NEW SECTION. Section 13. Local option election -- effect of local option. (1) The governing body of a municipality, county, or consolidated city-county may prohibit by ordinance or resolution the operation of a marijuana retailer or a marijuana microbusiness that sells marijuana products.

(2) The qualified electors of the municipality, county, or consolidated city-county may request an election on whether to overturn an ordinance or resolution allowing for the operations of a marijuana retailer or a marijuana microbusiness that sells marijuana products in the

municipality, county, or consolidated city-county by filing a petition in accordance with 7-5-131 through 7-5-135 and 7-5-137.

(3) The election may be held in conjunction with a regular election of the governing body, a general election, or a regular local or special election. The election must be called, conducted, counted, and canvassed in substantially the same manner as provided in 13-1-406.

(4) If the majority of the votes cast at the election are cast in favor of the prohibition of the operations of a marijuana retailer or a marijuana microbusiness that sells marijuana products in the county or municipality, the chair of the governing body shall declare by order entered on the records of the county or municipality that the county or municipality has approved the prohibition and shall notify the department of the election results.

(5) An election held pursuant to this section may not be held within 70 days before or after any primary, general, or regular local election.

(6) (a) If an election is held pursuant to this section in a county that contains within its limits a municipality of more than 5,000 persons according to the most recent federal decennial census, it is not necessary for the registered qualified electors in the municipality to file a separate petition asking for a separate or different vote on the question of whether to allow the operations of a marijuana retailer or a marijuana microbusiness that sells marijuana products.

(b) The county shall conduct the election in a manner that separates the votes in the municipality from those in the remaining parts of the county.

(c) If a majority of the voters in the county, including the voters in the municipality, vote to prohibit the operations of a marijuana retailer or a marijuana microbusiness that sells marijuana products, the county may not allow the prohibited operations.

(d) If a majority of the votes in the municipality are in favor of allowing the operations of a marijuana retailer or a marijuana microbusiness that sells marijuana products, the municipality shall allow the approved operations in the municipality.

(e) Nothing contained in this subsection prevents any municipality from having a separate election under the terms of this section.

(7) A county or municipality that has voted to uphold the prohibition on the operations of a marijuana retailer or of a marijuana microbusiness that sells marijuana products may vote to discontinue the prohibition and to allow the previously prohibited operations in the county or municipality. If the vote overturns the prohibition, the discontinuance of the prohibition is effective on the 90th day after the local option election is held.

(8) An individual residing in a municipality which prohibits the operations of a marijuana retailer or a marijuana microbusiness that sells marijuana products shall not be incriminated for legally acquiring and using marijuana products purchased legally in another municipality.

NEW SECTION. Section 14. Licensee protections. (1) Conduct by a licensee or a licensee representative that is allowed pursuant to a license and conduct by a person that allows property to be used by a licensee or a licensee representative for conduct allowed pursuant to a license is:

(a) lawful;

(b) not a violation of state or local law; and

(c) not a basis for seizure or forfeiture of any property or assets under state or local law.

(2) The state or a local government may not impose a criminal, civil, or administrative penalty on a licensee or a licensee representative or on a person who allows property to be used by a licensee or a licensee representative pursuant to a license solely for conduct allowed pursuant to a license.

NEW SECTION. Section 15. Protection of underage persons -- trafficking -- penalties. (1) A person who is not a licensee and who is 18 years of age or older may not intentionally traffic a marijuana product to a minor who is 2 or more years younger than the person. A person who traffics a marijuana product in violation of a misdemeanor.

(2) A licensee may not employ a person younger than 19 years of age to engage in a commercial marijuana activity.

(3) A licensee may not sell a marijuana product to a person younger than 19 years of age. The department shall suspend or revoke the license and may fine the licensee in an amount not to exceed \$10,000, or both, if the department finds that any licensee or the licensee's employee or agent knowingly has sold, served, or given any marijuana product to a minor on two separate occasions within any 12-month period.

(4) The establishment of all of the following facts by a licensee prosecuted for a violation of subsection (3) shall constitute a defense:

(a) that the purchaser falsely represented in writing, by producing a driver's license or valid photographic identification card bearing the purchaser's photograph, that the person was 19 years of age or older;

(b) that the purchaser's appearance was such that an ordinary, prudent person would believe that the purchaser was 19 years of age or older; and

(c) that the sale was made in good faith, relying on the purchaser's false written representation, driver's license, or identification card produced as provided in subsection (4)(a), and with the reasonable belief that the purchaser was actually 19 years of age or older.

(5) Nothing in this section may be construed or interpreted to prevent:

(a) the department from enforcing its rules against a licensee;

(b) a state agency from enforcing a law or rule that does not conflict with [sections 1 through 40] or rules promulgated pursuant to [sections 1 through 40]; or

(c) a local jurisdiction from enforcing a local ordinance that does not conflict with [sections 1 through 40] and related administrative rules.

(6) For the purposes of this section, "traffic" means:

(a) the distribution, sale, or bartering of marijuana; or

(b) the possession of marijuana with the intent to sell marijuana.

NEW SECTION. Section 16. Distribution and transport. [Sections 1 through 40] may not be construed to authorize a licensee to transport or distribute, or to cause to be transported or distributed, marijuana products outside the state, unless authorized by federal law.

NEW SECTION. Section 17. Courier transport. (1) Only a marijuana retailer, marijuana microbusiness, or marijuana courier may courier marijuana products.

NEW SECTION. Section 18. Packaging and labeling. (1) Before sale or transport by marijuana courier of a marijuana product, the marijuana product must be labeled and placed in a resealable, child-resistant package.

(2) Packages and labels for marijuana products may not be designed to be appealing to a child.

(3) Labels must include:

(a) for a package containing only marijuana flower, the net weight of marijuana in the package;

(b) identification of the licensee or licensees that produced or manufactured the marijuana product, the date on which the marijuana was harvested, the type of marijuana product and the date on which the marijuana product was manufactured and packaged;

(c) a list of pharmacologically active ingredients;

(d) for marijuana products, a list of all ingredients for the product or marijuana extract;

(e) a warning, if nuts or other known allergens are used in the item or in its manufacture; and

(f) a warning of possible adverse effects of consumption and a toll-free number for the state poison control center.

(g) type of cannabis concentrate should be listed for edible packaging, including solvent used.

NEW SECTION. Section 19. Marijuana products -- department of public health and human services. (1) Marijuana products shall be homogenized to ensure uniform disbursement of cannabinoids throughout the product.

(2) The department of public health and human services shall consult with the department of agriculture and the department of environmental quality to adopt rules for marijuana products:

(a) that establish random blind testing for pesticides, heavy metals, mold and mildew not exceeding 6 unannounced inspections with sample collections a year;

(b) that the presence of the following contaminants does not exceed harmful levels:

(i) residual solvents or chemicals, including explosive gases such as butane, propane, and hydrogen, and poisons, toxins, or carcinogens such as methanol, methylene chloride, acetone, benzene, toluene, and trichloroethylene;

(ii) foreign material, including hair, insects, or other similar adulterants; and

(iii) microbiological impurity, including total aerobic microbial count, total yeast mold count, pseudomonas aeruginosa, aspergillus species, staphylococcus aureus, aflatoxin B1, B2, G1, or G2, or ochratoxin A.

(iv) Residual levels of volatile organic compounds may not exceed harmful levels.

NEW SECTION. Section 20. Marijuana manufacturers and testing laboratories -- rulemaking. (1) The department, with the assistance of the department of environmental quality, department of agriculture, and department of health and human services environmental lab shall adopt rules to govern the licensing of a marijuana manufacturer and a marijuana testing laboratory.

(2) The department shall issue licenses as follows:

(a) "marijuana manufacturing level 1" for a site that manufactures marijuana extracts using nonvolatile solvents or no solvents;

(b) "marijuana manufacturing level 2" for a site that manufactures marijuana extracts using volatile solvents; and

(c) "marijuana testing laboratory" for a licensee that tests marijuana products. An owner or a person with an ownership interest in a laboratory license may not own or have ownership interest in a nonlaboratory facility licensed pursuant to [sections 1 through 40].

(3) Except as otherwise provided by law, a marijuana product may not be sold by a licensee unless a representative sample of the marijuana product has been tested by a marijuana testing laboratory to determine:

(a) whether the chemical profile of the sample conforms to the labeled content of compounds, including:

- (i) tetrahydrocannabinol;
- (ii) tetrahydrocannabinolic acid;
- (iii) cannabidiol;
- (iv) cannabidiolic acid;
- (v) terpenes;
- (vi) cannabigerol; and
- (vii) cannabinol

(4) The testing required by this section must be performed in a manner consistent with general requirements for the competence of testing and calibration activities, including sampling, the use of standard methods to ensure conformity, competence, and impartiality to test marijuana products.

(5) Any presale inspection, testing transfer, or transportation of marijuana products pursuant to this section must conform to a chain of custody protocol and any other requirements imposed by the department in accordance with [sections 1 through 40].

NEW SECTION. Section 21. Testing marijuana products. (1) A marijuana testing laboratory's testing of marijuana products must comply with the requirements set forth in applicable law and rules.

(2) The department shall consult with the department of environmental quality, the department of agriculture, and the department of health and human services to develop rules and procedures to:

(a) ensure that testing of marijuana products occurs prior to distribution to marijuana retailers or marijuana microbusinesses;

(c) subcontract with labs for testing marijuana and medical marijuana; and

(d) require destruction of a harvested batch of marijuana or of marijuana products if the testing samples from the batch or items indicate noncompliance with the applicable health and safety standards of the department, unless remedial measures can bring the marijuana or marijuana products into compliance with the standards.

(3) No later than January 1, 2020, the department of public health and human services environmental lab shall establish and provide to the department a set of certified reference materials for laboratory testing to be measured against.

NEW SECTION. Section 22. Advertising and marketing restrictions. (1) The department shall consult with the department of labor and industry to adopt rules that explicitly:

- (a) prohibit the advertisement and marketing of marijuana products:
 - (i) that is false, deceptive, or misleading, including making unproven health benefit claims;
 - (ii) that depicts consumption by children or other persons younger than 19 years of age;
 - (iii) that is designed using cartoon characters or to mimic any other product brand;
 - (iv) within 500 feet of a school or daycare center.

NEW SECTION. Section 23. Contracts. A contract related to the operation of a license is enforceable, and a contract entered into by a licensee or a licensee representative for conduct allowed pursuant to a license or entered into by a person who allows property to be used by a licensee or a licensee representative for conduct allowed pursuant to a license may not be considered unenforceable on the basis that the conduct allowed pursuant to the license is prohibited by federal law.

NEW SECTION. Section 24. Provision of professional services. An attorney, accountant, insurance agent, real estate agent, security guard, or other person engaged in a profession subject to state licensure may not be subject to disciplinary action by a professional association, a state professional board, or a state licensing entity because the professional provides professional services or assistance to prospective or licensed marijuana establishments or to another person in connection with activity that the professional reasonably believes complies with [sections 1 through 40] and rules adopted pursuant to [sections 1 through 40].

NEW SECTION. Section 25. Montana Medical Marijuana Act.

(1) Nothing in [sections 1 through 40] may be construed to:

- (a) limit a privilege or right of a registered cardholder, referral physician, treating physician, or licensed provider participating under the Montana Medical Marijuana Act;
- (b) allow a licensed provider to distribute marijuana to a person who is not a registered cardholder without first obtaining a temporary license, a marijuana retailer license, or a marijuana microbusiness license from the department; or
- (c) allow a licensed provider to purchase marijuana products in a manner or from a source not authorized under the Montana Medical Marijuana Act without first obtaining a temporary license, a marijuana retailer license, or a marijuana microbusiness license from the department.

(2) This initiative adds the following conditions to the qualified conditions list to the medical marijuana act:

- (a) Anxiety
- (b) Autism
- (c) Anything for which opioids would be prescribed
- (d) Insomnia
 - Anxiety
 - Bipolar Disorder
- (e) Depression
- (f) Alzheimers

NEW SECTION. Section 26. Protections for use of marijuana. A person or a licensee is not subject to arrest, prosecution, penalty, civil liability, or disciplinary action by a business or

professional licensing entity and may not be denied any right or privilege solely for conduct allowed pursuant to [sections 1 through 40]. Except by court order, state and local law enforcement agencies may not cooperate with or provide assistance to the United States government, or to any federal agency of the United States government, in enforcing the federal Controlled Substances Act solely for conduct that complies with [sections 1 through 40] or the Montana Medical Marijuana Act. The Montana supreme court and any disciplinary or character and fitness committees established by that court are considered business or professional licensing entities for the purposes of this section.

NEW SECTION. Section 27. Protections from discrimination for use of marijuana or medical marijuana. (1) A school may not refuse to enroll, deny financial aid, or otherwise penalize a person solely for conduct allowed pursuant to [sections 1 through 40] or the Montana Medical Marijuana Act, unless failing to do so would cause the school to lose a monetary or licensing-related benefit under federal law or regulation.

(2) A landlord may not refuse to lease property to or to otherwise penalize a person solely for conduct allowed pursuant to [sections 1 through 40] or the Montana Medical Marijuana Act, unless failing to do so would cause the landlord to lose a monetary or licensing-related benefit under federal law or regulation.

(3) Except as provided in subsection (2), a person may prohibit or restrict any of the actions or conduct otherwise allowed under [section 30 or 31] and may prohibit any activity for which a license is required pursuant to [sections 1 through 40] on the person's privately owned property.

(4) For the purposes of medical care, including organ transplants, a qualified patient's use of medical marijuana pursuant to the Montana Medical Marijuana Act must be considered the equivalent of the use of any other medication under the direction of a physician and does not constitute the use of an illicit substance or otherwise disqualify a qualified patient from medical care.

(5) (a) A person may not be denied custody of or visitation or parenting time with a child, and there is no presumption of abuse or neglect, for conduct allowed under [section 30 or 31] or the Montana Medical Marijuana Act, unless the person's behavior creates an imminent risk of serious harm to the child as established by clear and convincing evidence.

(b) For the purposes of subsection (5)(a), a determination that behavior creates an "imminent danger" may not be based solely on whether, when, or how often a person uses marijuana or medical marijuana.

(6) A person may not be prohibited from purchasing, storing, or owning firearms.

NEW SECTION. Section 28. Employment protections. (1) It is unlawful to take an adverse employment action against an employee who is not acting in a safety-sensitive position based on conduct that is allowed under the Montana Medical Marijuana Act.

(2) Nothing in this section:

(a) restricts an employer's ability to prohibit or take adverse employment action against an employee for the possession or use of intoxicating substances at work during work hours; or

(b) requires an employer to commit any act that would cause the employer to be in violation of federal law or that would result in the loss of a federal contract or federal funding.

(3) Every workplace shall post signs warning of the potential impairment effects of marijuana, any discipline or penalty an employee may receive for using marijuana while at work or for coming to work impaired, and a statement that possession or use of marijuana is prohibited pursuant to federal law.

(4) As used in this section, "adverse employment action" means refusing to hire or employ a person, barring or discharging a person from employment, requiring a person to retire from employment, or discriminating against an employee in compensation or in terms, conditions, or privileges of employment.

(5) An employer may not terminate an employee's contract based on actions of legally acquiring and using marijuana products.

NEW SECTION. Section 29. Protections for person under state supervision. A person who is serving a period of probation or parole or who is under the supervision of the state or a local government pending trial or as part of a community supervision program may not be penalized for conduct allowed under [section 30 or 31] or the Montana Medical Marijuana Act.

NEW SECTION. Section 30. Personal use of marijuana. (1) The following conduct is lawful for a person who is 19 years of age or older and may not constitute grounds for detention, search, or arrest of a person or for a violation of probation or parole, and marijuana products that relate to the conduct are not contraband or subject to seizure or forfeiture pursuant to the Controlled Substances Act or the Forfeiture Act:

(a) possessing, using, being under the influence of, displaying, purchasing, obtaining, or transporting not more than 2 ounces of marijuana or 16 grams of marijuana extracts;

(b) transferring, without financial consideration, to a person who is 19 years of age or older not more than 2 ounces of marijuana or 16 grams of marijuana extracts

(d) Making, manufacturing with nonvolatile substances, keeping, storing, or transferring without remuneration to a person who is 19 years of age or older homemade marijuana extract or marijuana products containing not more than 2 ounces of marijuana or 16 grams of marijuana extracts;

(e) With respect to homegrown marijuana, possessing, planting, cultivating, harvesting, drying, manufacturing, or transporting not more than six mature marijuana plants and eighteen immature marijuana plants per person over 19 up to two people per household and possessing the marijuana produced by the plants;

(f) Transporting homegrown marijuana, mature or immature marijuana plants, or marijuana products as described in subsections (1)(b) and (1)(d) when the person is moving the person's residence to another location or for purposes of testing or manufacturing;

(g) smoking, ingesting, or otherwise consuming marijuana or marijuana products;

(h) possessing, using, displaying, purchasing, obtaining, manufacturing, transporting, or giving away to a person 19 years of age or older marijuana paraphernalia; and

(i) assisting another person who is 19 years of age or older in, or allowing property to be used in, any of the acts described in subsections (1)(a) through (1)(h).

(2) Subsections (1)(g) and (1)(h) are intended to meet the requirements of 21 U.S.C. 863(f) by authorizing, under state law, any person in compliance with this section to manufacture, possess, or distribute marijuana paraphernalia.

(3) Except as provided in subsection (4), none of the following, individually or in combination with each other, constitutes reasonable articulable suspicion of a crime:

(a) the odor of marijuana or marijuana extracts or of burnt marijuana or marijuana extracts;
(b) the possession of marijuana or the suspicion of possession of marijuana without evidence of quantity in excess of 2 ounces;

(c) the possession of multiple containers of marijuana without evidence of quantity in excess of 2 ounces;

(d) the possession of marijuana extracts or the suspicion of possession of marijuana extracts without evidence of quantity in excess of 16 grams;

(e) the possession of multiple containers of marijuana extracts without evidence of quantity in excess of 16 grams; or

(f) the possession of marijuana or marijuana extracts in proximity to any amount of cash or currency without evidence of marijuana quantity in excess of 2 ounces or of marijuana extracts quantity in excess of 16 grams.

(4) Subsection (3) does not apply when a law enforcement officer is investigating whether a person is operating or in physical control of a vehicle or watercraft while intoxicated, under the influence of, or impaired by alcohol or a drug or any combination thereof in violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-411.

NEW SECTION. Section 31. Personal cultivation of marijuana. (1) Personal cultivation of marijuana is subject to the following restrictions:

(a) A person who plants, produces, harvests, or dries marijuana or who manufactures marijuana products must do so in accordance with a local ordinance that does not conflict with [sections 1 through 40].

(b) The living plants and any marijuana produced by the plants in excess of 2 ounces must be kept within the person's private residence, or on the grounds of that private residence, in a locked space and may not be visible by normal, unaided vision from a public place.

(c) No more than six mature plants and eighteen immature plants may be produced by one person, and no more than 12 mature plants may be present in one household.

(2) A local jurisdiction may not prohibit a person from producing homegrown marijuana as provided for in [sections 1 through 40].

NEW SECTION. Section 32. Limits on personal consumption -- penalties. (1) Nothing in [section 30 or 31] may be construed to:

(a) allow a person to smoke marijuana or marijuana products in a public place, except in a marijuana consumption area;

(b) allow a person to produce marijuana in public view;

(c) restrict the ability of an individual or private entity to prohibit conduct otherwise allowed under [section 30 or 31] on the individual's or private entity's privately owned property.

(2) A person who violates subsection (1)(a)(i) is subject to a civil penalty not to exceed \$40.

(3) A person who violates subsection (1)(a)(ii) is subject to a civil penalty not to exceed \$20.

(4) (a) For purposes of this section, "smoke" means to inhale, exhale, burn, or carry any lighted or heated device or pipe, or any other lighted or heated marijuana product intended for inhalation, whether natural or synthetic, in any manner or in any form.

(b) The term does not include the use of an electronic smoking device that creates an aerosol or vapor.

NEW SECTION. Section 33. Unlicensed marijuana sales -- penalties. (1) Except as allowed in [sections 1 through 40] or the Montana Medical Marijuana Act, it is unlawful for a person without a license to intentionally distribute marijuana products.

(2) A person under 19 years of age who violates subsection (1) is subject to:

(a) a fine of \$100;

(b) attendance at a 4-hour evidence-based drug education program;

(c) 4 hours of community service; or

(d) restorative justice mediation.

(3) Except as otherwise provided in [section 15], a person 19 years of age or older who violates subsection (1) is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than 1 year or by a fine of not more than \$1,000, or both.

(4) A person 18 years of age or older who violates subsection (1) and conducts unlicensed marijuana sales from a storefront is subject upon first offense to a misdemeanor and is subject to a felony for a second offense and shall be punished by imprisonment in the state prison for not less than 3 months or more than 2 years or by a fine of not more than \$50,000, or both.

NEW SECTION. Section 34. Unlicensed marijuana production -- penalty. A person in possession of more than six mature marijuana plants and eighteen immature marijuana plants is guilty of a misdemeanor for a first offense and a felony for second offense and shall be punished by imprisonment in the state prison for not less than 3 months or more than 2 years or by a fine of not more than \$50,000, or both.

NEW SECTION. Section 35. Unlicensed manufacturing of marijuana extracts -- penalty. Except as permitted by the Montana Medical Marijuana Act, it is unlawful for any person to use volatile solvents to manufacture marijuana extracts without a license issued pursuant to [sections 1 through 40] or the Montana Medical Marijuana Act. A person who violates this section is guilty of a felony and shall be punished by imprisonment in the state prison for not less than 18 months or more than 3 years or by a fine of not more than \$50,000, or both.

NEW SECTION. Section 36. Destruction of arrest and conviction records -- procedure. (1) If a person is charged with any offense provided in [sections 32 through 35], whether or not the person is convicted, all records held by a court, an agency of the state, or a local jurisdiction that relate to the person's arrest or conviction must be automatically destroyed 2 years after the date of the person's conviction or the date of the person's arrest if there was no conviction. If the person is a juvenile or was a juvenile at the time of the arrest or conviction, the records must be retained for 2 years or until the person is 18 years of age, whichever comes first, and must then be destroyed. The records must also be removed from any statewide criminal databases.

(2) After the destruction of records pursuant to subsection (1), a court, an agency of the state, or a local jurisdiction shall treat the case as if it never occurred, and all index references to the case shall be deleted. The court, agency, or local jurisdiction shall respond to an inquiry regarding the case by stating that no record exists with respect to the referenced person with respect to that case.

NEW SECTION. Section 37. Expungement of records of criminal violations pertaining solely to marijuana. (1) A person convicted prior to [the effective date of this act] of possession of marijuana in violation of 45-9-102, distribution of marijuana in violation of 45-9-101, possession with intent to distribute marijuana in violation of 45-9-103, criminal possession of marijuana paraphernalia in violation of 45-10-103, or any other offense that is no longer a crime pursuant to [sections 1 through 40] may apply to the court of conviction for an expungement order.

(2) The court shall grant an expungement order under subsection (1) upon a finding that the applicant is eligible for the expungement.

(3) A copy of the order must be sent by the person whose records are to be expunged to the arresting law enforcement agency, the prosecutor's office that prosecuted the offense, the clerk of the court in which the person was sentenced, and the department of justice, along with a form prepared by the department of justice that contains identifying information about the petitioner.

NEW SECTION. Section 38. Dismissal of pending marijuana charges. (1) A person charged prior to [the effective date of this act] with any marijuana offense arising from a set of facts and circumstances that resulted in no criminal charge other than the marijuana offense may apply to the court where the charge is pending for an order dismissing the charge.

(2) The court shall grant an order dismissing the charge under subsection (1) upon a finding that the applicant is eligible for the order.

(3) As used in this section, "marijuana offense" means any criminal offense prohibiting the cultivation, possession, sale, transport, or use of marijuana.

NEW SECTION. Section 39. Recall or dismissal of sentence -- incarcerated person. (1) Within 45 days following [the effective date of this act], a corrections facility, a county jail, or a juvenile corrections facility in which a person is currently incarcerated for an offense that is no longer a crime pursuant to the provisions of [sections 1 through 40] or that would have resulted in a lesser offense if [sections 1 through 40] had been in effect at the time of the offense shall notify the court that the convicted person's case should be reopened to consider possible recall or dismissal of the person's sentence.

(2) A court shall reopen a case pursuant to subsection (1) and recall the person's sentence or dismiss the person's sentence because it is legally invalid unless the court determines that doing so would pose an unreasonable risk of danger to public safety.

(3) A person who is resentenced pursuant to this section shall be given credit against the person's new sentence for time already served.

(4) A person who is resentenced pursuant to this section may not be sentenced to a term longer than the person's original sentence and may not have any charges reinstated that were originally dismissed pursuant to a negotiated plea agreement.

(5) A person who has completed the person's sentence for a conviction, whether by trial or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense if [sections 1 through 40] had been in effect at the time of the offense may notify the court in writing to have the conviction dismissed and sealed because the prior conviction is now legally invalid or redesignated as a civil infraction. The court shall redesignate the conviction as a civil infraction or dismiss and seal the conviction as legally invalid because of the enactment of [sections 1 through 40] unless the court makes a finding that the conviction is not legally invalid or was not redesignated as a civil infraction pursuant to [sections 1 through 40].

(6) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to a person who was convicted of or incarcerated for an offense.

(7) The provisions of this section must apply equally to juvenile delinquency adjudications and convictions of a juvenile person if the juvenile would not have been guilty of an offense or would have been guilty of a lesser offense as provided in [sections 1 through 40].

(8) A fee or cost of any kind may not be imposed against a person whose sentence is reviewed pursuant to this section.

NEW SECTION. Section 40. Writ of mandamus. Any person may commence a legal action for a writ of mandamus to compel the department to perform its duties pursuant to [sections 1 through 40].

NEW SECTION. Section 41. Definitions. As used in [sections 41 through 50], the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Marijuana" has the meaning provided in [section 3].

(3) "Marijuana product" has the meaning provided in [section 3].

(4) "Marijuana retailer" means a person that is licensed by the department to sell and courier marijuana products to a consumer in this state.

(5) "Person" means an individual, firm, partnership, corporation, association, company, committee, other group of persons, or other business entity, however formed.

(6) "Purchaser" means a person to whom a sale of a marijuana product is made.

(7) "Retail price" means the established price for which a marijuana retailer sells a marijuana product to a purchaser before any discount or reduction.

(8) "Sale" or "sell" means any transfer of marijuana products for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means.

NEW SECTION. Section 42. Tax on marijuana retailer. (1) (a) There is a tax equal to the percentage provided in subsection (1)(b) on a marijuana retailer's gross sales that is payable on a monthly basis.

(b) The percentage of tax on gross sales may not exceed 15%.

(2) A marijuana retailer shall submit a monthly report to the department listing the total dollar amount of sales. The report must be:

(a) made on forms prescribed by the department; and

(b) submitted within 15 days of the end of each calendar month.

(3) At the time the report is filed, the marijuana retailer shall submit a payment equal to the percentage provided in subsection (1)(b) of the total dollar amount of sales.

(4) The department shall deposit the taxes paid under this section in the dedicated marijuana state special revenue account provided for in [section 50].

(5) The tax imposed by [sections 41 through 50] and related interest and penalties are a personal debt of the person required to file a return from the time that the liability arises, regardless of when the time for payment of the liability occurs.

(6) For the purpose of determining liability for the filing of statements and the payment of taxes, penalties, and interest owed under [sections 43 through 46]:

(a) the officer of a corporation whose responsibility it is to truthfully account for and pay to the state taxes provided for in [sections 43 through 46] and who fails to pay the taxes is liable to the state for the taxes and the penalty and interest due on the amounts;

(b) each officer of the corporation, to the extent that the officer has access to the requisite records, is individually liable along with the corporation for filing statements and for unpaid taxes, penalties, and interest upon a determination that the officer:

(i) possessed the responsibility to file statements and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation for directing the filing of statements or the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure to file statements required by [sections 41 through 50] or pay taxes due as required by [sections 41 through 50];

(c) each partner of a partnership is jointly and severally liable, along with the partnership, for any statements, taxes, penalties, and interest due while a partner;

(d) each member of a limited liability company that is treated as a partnership or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member;

(e) the member of a single-member limited liability company that is disregarded for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member; and

(f) each manager of a manager-managed limited liability company is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.

(7) In determining which corporate officer is liable, the department is not limited to considering the elements set forth in subsection (6)(a) to establish individual liability and may consider any other available information.

(8) In the case of a bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual remains liable for any statements and the amount of taxes, penalties, and interest unpaid by the entity.

NEW SECTION. Section 43. Returns -- payment -- recordkeeping -- authority of department. (1) Each marijuana retailer shall file a return, on a form provided by the department, and pay the tax due as provided in [section 42].

(2) Each return must be authenticated by the person filing the return or by the person's agent authorized in writing to file the return.

(3) (a) A person required to pay to the department the taxes imposed by [sections 41 through 50] shall keep for 5 years:

- (i) all receipts issued; and
- (ii) an accurate record of all sales of marijuana and marijuana products, showing the name and address of each purchaser, the date of sale, and the quantity, kind, and retail price of each product sold.

(b) For the purpose of determining compliance with the provisions of [sections 41 through 50], the department is authorized to contract with a CPA firm with at least 3 years experience in the cannabis industry to examine or cause to be examined any books, papers, records, or memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

- (i) require the attendance of a person having knowledge or information relevant to a return;
- (ii) compel the production of books, papers, records, or memoranda by the person required to attend;
- (iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;
- (iv) take testimony on matters material to the determination; and
- (v) administer oaths or affirmations.

(4) Pursuant to rules established by the department, returns may be computer-generated and electronically filed.

(5) State taxes on the sale of marijuana are exempt from 26 U.S. Code Section 280E.

NEW SECTION. Section 44. Deficiency assessment -- penalty and interest -- statute of limitations. (1) If the department determines that the amount of the tax due is greater than the amount disclosed by a return, it shall mail to the marijuana retailer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The marijuana retailer may seek review of the determination pursuant to 15-1-211.

(2) Penalty and interest must be added to a deficiency assessment as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(3) The amount of tax due under any return may be determined by the department within 5 years after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing. For purposes of this section, a return due under [sections 41 through 50] and filed before the last day prescribed by law or rule is considered to be filed on the last day prescribed for filing.

NEW SECTION. Section 45. Procedure to compute tax in absence of statement -- estimation of tax -- failure to file -- penalty and interest. (1) If the marijuana retailer fails to file any return required by [section 43] within the time required, the department may, at any time, audit the marijuana retailer or estimate the taxes due from any information in its possession

and, based on the audit or estimate, assess the marijuana retailer for the taxes, penalties, and interest due the state.

(2) The department shall impose penalty and interest as provided in 15-1-216. The department shall mail to the marijuana retailer a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The marijuana retailer may seek review of the determination pursuant to 15-1-211. The department may waive any penalty pursuant to 15-1-206.

NEW SECTION. Section 46. Authority to collect delinquent taxes. (1) (a) The department shall collect taxes that are delinquent as determined under [sections 41 through 50].

(b) If a tax imposed by [sections 41 through 50] or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

(2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the marijuana retailer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the marijuana retailer has the right to a review of the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the marijuana retailer if a claim is required before funds are available for offset.

NEW SECTION. Section 47. Refunds -- interest -- limitations. (1) A claim for a refund or credit as a result of overpayment of taxes collected under [sections 41 through 50] must be filed within 5 years of the date that the return was due, without regard to any extension of time for filing.

(2) (a) Interest paid by the department on an overpayment must be paid or credited at the same rate as the rate charged on delinquent taxes under 15-1-216.

(b) Except as provided in subsection (2)(c), interest must be paid from the date that the return was due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary information.

(c) The department is not required to pay interest if:

(i) the overpayment is refunded or credited within 6 months of the date that a claim was filed;
or

(ii) the amount of overpayment and interest does not exceed \$1.

NEW SECTION. Section 48. Information -- confidentiality -- agreements with another state. (1) (a) Except as provided in subsections (2) through (5), in accordance with 15-30-2618 and 15-31-511, it is unlawful for an employee of the department or any other public official or public employee to disclose or otherwise make known information that is disclosed in a return or report required to be filed under [sections 41 through 50] or information that concerns the affairs of the person making the return and that is acquired from the person's records, officers, or employees in an examination or audit.

(b) This section may not be construed to prohibit the department from publishing statistics if they are classified in a way that does not disclose the identity of a person making a return or the content of any particular report or return. A person violating the provisions of this section is subject to the penalty provided in 15-30-2618 or 15-31-511 for violating the confidentiality of individual income tax or corporate income tax information.

(2) (a) This section may not be construed to prohibit the department from providing information obtained under [sections 41 through 50] to the department of justice or law enforcement to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under [sections 41 through 50].

(b) The department may enter into an agreement with the taxing officials of another state for the interpretation and administration of the laws of their state that provide for the collection of a sales tax or use tax in order to promote fair and equitable administration of the laws and to eliminate double taxation.

(c) In order to implement the provisions of [sections 41 through 50], the department may furnish information on a reciprocal basis to the taxing officials of another state if the information remains confidential under statutes within the state receiving the information that are similar to this section.

(3) In order to facilitate processing of returns and payment of taxes required by [sections 41 through 50], the department may contract with vendors and may disclose data to the vendors. The data disclosed must be administered by the vendor in a manner consistent with this section.

(4) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of [sections 41 through 50] or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of [sections 41 through 50] or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(5) This section may not be construed to limit the investigative authority of the legislative branch, as provided in 5-11-106, 5-12-303, or 5-13-309.

NEW SECTION. Section 49. Department to make rules. The department of revenue shall prescribe rules necessary to carry out the purposes of imposing and collecting the marijuana tax on gross sales on a marijuana retailer.

NEW SECTION. Section 50. Dedicated marijuana state special revenue account. (1) There is a dedicated marijuana state special revenue account within the state special revenue fund established in 17-2-102.

(2) The account consists of money deposited into the account pursuant to the tax collected pursuant to [sections 41 through 50].

(3) Money collected in the account must be allocated as follows:

(a) 15% to the guarantee account provided for in 20-9-622;

- (b) 15% to the guaranteed higher education account
 - (b) 10% to the department of public health and human services provided for in 2-15-2201 for mental health treatment, suicide prevention, and education;
 - (d) 15% property tax credit
 - (e) 4% to the department of health and human services to fund the medical marijuana program
 - (f) 10% to veterans services
 - (f) 6% to the department of agriculture for a special account for hemp research and marketing to be created by the hemp advisory council
 - (g) 10% to incorporated municipalities based on marijuana taxes collected in the taxing unit;
 - (h) 10% to counties or a consolidated city-county based on marijuana taxes collected in the taxing unit; and
 - (i) a maximum of 5% to the department of revenue through an expenditure appropriation by the legislature for administration of [sections 41 through 50], with any remainder being distributed to the department of agriculture for a special revenue account for hemp research and marketing to be created by the hemp advisory council.
- (4) The tax proceeds received for incorporated municipalities, counties, and consolidated city-counties pursuant to subsections (2)(e) and (2)(f) are statutorily appropriated from this account to the entities as provided in 17-7-502.

NEW SECTION. Section 51. Local option marijuana sales tax -- definitions. As used in [sections 51 through 55], the following definitions apply:

- (1) "Governing body" means the legislative authority of an incorporated municipality, or a county.
- (2) "Gross sales" means a marijuana retailer's gross sales under the provisions of [sections 41 through 50] as administered by the department of revenue.
- (3) "Local option marijuana tax" means a local option tax imposed pursuant to [sections 51 through 55] on gross sales.
- (4) "Marijuana product" has the meaning provided in [section 3].
- (5) "Marijuana retailer" has the meaning provided in [section 3].
- (6) "Qualified elector" means a person who is qualified to vote under 13-1-111 and is a resident of an incorporated municipality, a county, or a consolidated city-county.

NEW SECTION. Section 52. Local option marijuana tax -- delegation. As required by 7-1-112, [sections 51 through 55] specifically delegate to the qualified electors of an incorporated municipality, a county, or a consolidated city-county the power to authorize a local option marijuana tax on a marijuana retailer's gross sales within the incorporated municipality, county, or consolidated city-county.

NEW SECTION. Section 53. Limit on local option marijuana tax. (1) The rate of a local option marijuana tax on a marijuana retailer's gross sales must be established by the election petition or resolution provided for in [section 54], but the rate may not exceed 3%.

(2) A local option marijuana tax authorized as provided in [sections 51 through 55] is a tax on a marijuana retailer's gross sales as provided in [section 42]. The approved rate is in addition to the tax provided for in [section 42].

(3) The provisions of [sections 41 through 50] apply to a local option marijuana tax authorized as provided in [sections 51 through 55].

NEW SECTION. Section 54. Local option tax on marijuana retailer. (1) A local option marijuana tax may not be imposed, amended, or repealed unless the question has been submitted to the qualified electors of an incorporated municipality, a county, or a consolidated city-county and approved by a majority of the qualified electors voting on the question.

(2) The local option marijuana tax question may be presented to the qualified electors of an incorporated municipality, a county, or a consolidated city-county by a petition of the qualified electors, as provided in 7-5-131 through 7-5-135 and 7-5-137, to the governing body or by a resolution of the governing body.

(3) The petition or resolution referring the local option marijuana tax question must state:

- (a) the rate of the local option marijuana tax;
- (b) the duration of the local option marijuana tax;
- (c) the dates the local option marijuana tax will be collected;
- (d) the date the local option marijuana tax becomes effective, which may not be earlier than 180 days after the election; and
- (e) the purposes that may be funded by the local option marijuana tax revenue.

(4) Upon passage of a resolution or upon receipt of an adequate petition, the governing body shall hold an election in accordance with Title 13, chapter 1, part 5.

(5) Notice of the election must be given as provided in 13-1-108 and must include the information required by subsection (3) of this section.

(6) The question of the imposition of a local option marijuana tax may not be placed before the qualified electors more than once in any fiscal year.

NEW SECTION. Section 55. Local option marijuana tax administration. (1) Upon adoption of a local option marijuana tax, the governing body shall notify the department of revenue of the adoption of the local option marijuana tax, the rate of the tax, the effective date of the tax, and the dates the tax will be collected.

(2) The department of revenue shall collect the local option marijuana tax at the time of collection of the tax provided for in [section 42]. The proceeds of the local option marijuana tax must, in accordance with the provisions of 17-2-124, be deposited in an account in the state special revenue fund to the credit of the department for distribution to local governments. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax.

(3) The department shall distribute the local option marijuana tax and any associated penalties and interest to the incorporated municipality, county, or consolidated city-county within 30 days of the end of the month in which the taxpayer is required to file returns with the department pursuant to [section 42].

(4) The administration provisions of [sections 41 through 50] apply to the local option marijuana tax provided for in [sections 51 through 55], including provisions related to collection, enforcement, exemptions, the seller's permit, returns, payment of the tax, the vendor allowance, and penalties and interest.

Section 56. Section 15-64-101, MCA, is amended to read:

"15-64-101. Definitions. As used in this part, the following definitions apply:

- (1) "Department" means the department of revenue provided for in 2-15-1301.
- (2) "Marijuana product" means marijuana as defined in 50-32-101 [section 3] and marijuana-infused products as defined in 50-46-302.
- (3) "Marijuana product provider" means provider or a marijuana-infused products provider as those terms are defined in 50-46-302.
- (4) "Person" means an individual, firm, partnership, corporation, association, company, committee, other group of persons, or other business entity, however formed.
- (5) "Purchaser" means a person to whom a sale of a marijuana product is made.
- (6) "Retail price" means the established price for which a marijuana product provider sells a marijuana product to a purchaser before any discount or reduction.
- (7) "Sale" or "sell" means any transfer of marijuana products for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means."

Section 57. Section 15-64-102, MCA, is amended to read:

"15-64-102. Tax on marijuana product providers.

- (1) (a) The percentage of tax on gross sales in subsection is reduced and may not exceed 0%.
 - (b) The current medical marijuana dispensary fee is removed and not to exceed \$500.
 - (c) The medical marijuana patient card fee is removed and not to exceed \$5.
- (2) Medical marijuana businesses are not subject to federal tax code 26 U.S.C. 280e.

Section 58. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

- (a) The law containing the statutory authority must be listed in subsection (3).
- (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-1304; 10-4-304; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; [section 50]; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512;

19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-148; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-321; 61-3-415; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-150; 76-13-416; 76-17-103; 76-22-109; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant to sec. 55, Ch. 151, L. 2017, the inclusion of 30-10-1004 terminates June 30, 2021; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023, and pursuant to sec. 2, Ch. 340, L. 2017, and sec. 32, Ch. 429, L. 2017, is void for fiscal years 2018 and 2019; and pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027.)"

Section 60. Section 44-12-102, MCA, is amended to read:

"44-12-102. Things subject to forfeiture. (1) A court may order, as part of the sentence imposed upon conviction, that the following property be forfeited as provided in 44-12-207 through 44-12-211:

(a)(1) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b)(2) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 60 grams;

(c)(3) except as provided in subsection (2), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b) (2);

(d)(4) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels, that are used or intended for use in any manner to facilitate the commission of a violation of Title 45, chapter 9;

(e)(5) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9;

(f)(6) all drug paraphernalia as defined in 45-10-101;

Section 61. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal distribution of dangerous drugs. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal distribution of dangerous drugs if the person sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101

(3)(2) A person convicted of criminal distribution of dangerous drugs involving giving away or sharing any dangerous drug, as defined in 50-32-101, shall be sentenced as provided in 45-9-102.

(4)(3) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in subsection (1), (2), (3), or (5)(4) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount of not more than \$50,000, or both.

(5)(4) A person who was an adult at the time of distribution and who is convicted of criminal distribution of dangerous drugs to a minor shall be sentenced as follows:

(a) For a first offense, the person shall be imprisoned in the state prison for a term not to exceed 4 years and may be fined not more than \$50,000.

(b) For a second or subsequent offense, the person shall be imprisoned in the state prison for a term not to exceed life and may be fined not more than \$50,000.

(6)(5) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 62. Section 45-9-102, MCA, is amended to read:

"45-9-102. Criminal possession of dangerous drugs. (1) Except as provided in 50-32-609 or Title 50, chapter 46, a person commits the offense of criminal possession of dangerous drugs if the person possesses any dangerous drug, as defined in 50-32-101

(3)(2) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (1) or (2) shall be imprisoned in the state prison for a term not to exceed 2 years or be fined an amount not to exceed \$5,000, or both.

(4)(3) A person convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

(5)(4) Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 63. Section 45-9-103, MCA, is amended to read:

"45-9-103. Criminal possession with intent to distribute. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal possession with intent to distribute if the person possesses with intent to distribute any dangerous drug as defined in 50-32-101.

(2) A person convicted of criminal possession with intent to distribute not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 2 years or be fined an amount not to exceed \$50,000, or both.

(4)(3) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 64. Section 45-9-110, MCA, is amended to read:

"45-9-110. Criminal production or manufacture of dangerous drugs. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal production or manufacture of dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal production or manufacture of dangerous drugs, as defined in 50-32-101, shall be imprisoned in the state prison for a term of not more than 5 years and may be fined an amount not to exceed \$50,000.

(3) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 65. Section 45-10-101, MCA, is amended to read:

"45-10-101. Definitions. (1) As used in this part, the term "drug paraphernalia" means all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a dangerous drug. It includes but is not limited to:

(a) kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing dangerous drugs;

(b) scales and balances used, intended for use, or designed for use in weighing or measuring dangerous drugs;

- (c) dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting dangerous drugs;
- (d) objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cocaine into the human body, such as;
- (e) miniature cocaine spoons and cocaine vials;

Section 66. Section 50-32-101, MCA, is amended to read:

"50-32-101. Definitions. As used in this chapter, the following definitions apply:

- (1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or other means, to the body of a patient or research subject by:
 - (a) a practitioner or by the practitioner's authorized agent; or
 - (b) the patient or research subject at the direction and in the presence of the practitioner.
- (2) (a) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser.
- (b) The term does not include a common or contract carrier, public warehouse operator, or employee of the carrier or warehouse operator.
- (3) "Board" means the board of pharmacy provided for in 2-15-1733.
- (4) "Bureau" means the drug enforcement administration, United States department of justice, or its successor agency.
- (5) "Counterfeit substance" means a dangerous drug or the container or labeling of a dangerous drug without authorization that bears the trademark, trade name, or other identifying mark, imprint, number, or device or a likeness of an identifying mark, imprint, number, or device of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.
- (6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V set forth in Title 50, chapter 32, part 2.
- (7) (a) "Dangerous drug analogue" means any material, compound, mixture, or preparation that is structurally related to or chemically derived from any dangerous drug in Schedules I through V set forth in Title 50, chapter 32, part 2, or that is expressly or impliedly represented to produce or does produce a physiological effect similar to or greater than the effect of a dangerous drug in Schedules I through V.
- (b) The term does not include any material, compound, mixture, or preparation that is currently listed as a dangerous drug in Schedules I through V set forth in Title 50, chapter 32, part 2, or in an administrative rule, that is approved for use by the United States food and drug administration, or that is otherwise specifically excepted from Title 50, chapter 32, part 2.
- (8) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.
- (9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (10) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.
- (11) "Dispenser" means a practitioner who dispenses.

(12) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(13) "Distributor" means a person who distributes.

(14) "Drug" has the same meaning as provided in 37-7-101.

(15) "Hashish", as distinguished from marijuana, means the mechanically processed or extracted plant material that contains tetrahydrocannabinol (THC) and is composed of resin from the cannabis plant.

(16)(15) "Immediate precursor" means a substance that the board finds to be and by rule designates as being the principal compound commonly used or produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(17)(16) (a) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes the packaging or repackaging of the drug or labeling or relabeling of its container.

(b) Manufacture does not include the preparation or compounding of a dangerous drug by an individual for personal use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(i) by a practitioner as an incident to the administering or dispensing of a dangerous drug in the course of a professional practice; or

(ii) by a practitioner or the practitioner's authorized agent under the practitioner's supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(18) "Marijuana (marihuana)" means all plant material from the genus Cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(19)(17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and a salt, compound, derivative, or preparation of opium or opiate;

(b) a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of the drugs referred to in subsection (19)(a) (17)(a), but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; or

(d) coca leaves and a salt, compound, derivative, or preparation of coca leaves and a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine.

(20)(18) "Opiate" means a drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term does not include, unless specifically designated as a dangerous drug under 50-32-202, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term does include its racemic and levorotatory forms.

(21)(19) "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

(22)(20) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(23)(21) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(24)(22) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state;

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; and

(c) a physician licensed to practice medicine or a dentist licensed to practice dentistry in another state.

(25)(23) "Prescription" means an order given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name and address of the prescriber, the prescriber's license classification, the name of the patient, the name and quantity of the drug or drugs prescribed, the directions for use, and the date of its issue. These stipulations apply to written, electronically transmitted, and telephoned prescriptions.

(26)(24) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this chapter.

(27)(25) "State", when applied to a part of the United States, includes a state, district, commonwealth, territory, insular possession of the United States, and any area subject to the legal authority of the United States of America.

(28)(26) "Ultimate user" means a person who lawfully possesses a dangerous drug for personal use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household."

Section 67. Section 50-32-222, MCA, is amended to read:

"50-32-222. Specific dangerous drugs included in Schedule I. Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Opiates. Unless specifically excepted or listed in another schedule, any of the following are opiates, including isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) acetyl-alpha-methylfentanyl, also known as N-(1-(1-methyl-2-phenethyl)-4-piperidinyl)-N-phenylacetamide;

(b) acetylmethadol, also known as 4-(dimethylamino)-1-ethyl-2,2-diphenylpentyl acetate or methadyl acetate;

(c) allylprodine, also known as 1-methyl-4-phenyl-3-(prop-2-en-1-yl)piperidin-4-yl propanoate;

(d) alphacetylmethadol, except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;

(e) alphameprodine;

- (f) alphamethadol;
- (g) alpha-methylfentanyl, also known as (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
- (h) alpha-methylthiofentanyl, also known as N-[1-methyl-2-(2-thienyl)ethyl-4-piperidiny]-N-phenylpropanamide;
- (i) benzethidine;
- (j) betacetylmethadol;
- (k) beta-hydroxyfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidiny]-N-phenylpropanamide;
- (l) beta-hydroxy-3-methylfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidiny]-N-phenylpropanamide;
- (m) betameprodine;
- (n) betamethadol;
- (o) betaprodine;
- (p) clonitazene;
- (q) dextromoramide;
- (r) diampromide;
- (s) diethylthiambutene;
- (t) difenoxin;
- (u) dimenoxadol;
- (v) dimepheptanol;
- (w) dimethylthiambutene;
- (x) dioxaphetyl butyrate;
- (y) dipipanone;
- (z) ethylmethylthiambutene;
- (aa) etonitazene;
- (bb) etoxeridine;
- (cc) furethidine;
- (dd) hydroxypethidine;
- (ee) ketobemidone;
- (ff) levomoramide;
- (gg) levophenacylmorphane;
- (hh) 3-methylfentanyl, also known as N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide;
- (ii) 3-methylthiofentanyl, also known as N-[3-methyl-1-(2-thienyl)ethyl-4-piperidiny]-N-phenylpropanamide;
- (jj) morpheridine;
- (kk) MPPP, also known as desmethylprodine and (1-methyl-4-phenyl-4-propionoxypiperidine);
- (ll) noracymethadol;
- (mm) norlevorphanol;
- (nn) normethadone;
- (oo) norpipanone;

(pp) para-fluorofentanyl, also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide;
(qq) PEPAP, also known as (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
(rr) phenadoxone;
(ss) phenampromide;
(tt) phenomorphan;
(uu) phenoperidine;
(vv) piritramide;
(ww) proheptazine;
(xx) properidine;
(yy) propiram;
(zz) racemoramide;
(aaa) thiofentanyl, also known as N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide;
(bbb) tilidine; and
(ccc) trimeperidine.

(2) For the purposes of subsection (1)(hh), the term "isomer" includes the optical, positional, and geometric isomers.

(3) Opium derivatives. Unless specifically excepted or listed in another schedule, any of the following are opium derivatives, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) acetorphine;
- (b) acetyldihydrocodeine;
- (c) benzylmorphine;
- (d) codeine methylbromide;
- (e) codeine-N-oxide;
- (f) cyprenorphine;
- (g) desomorphine;
- (h) dihydromorphine;
- (i) drotebanol;
- (j) etorphine, except hydrochloride salt;
- (k) heroin;
- (l) hydromorphenol;
- (m) methyl-desorphine;
- (n) methyldihydromorphine;
- (o) morphine methylbromide;
- (p) morphine methylsulfonate;
- (q) morphine-N-oxide;
- (r) myrophine;
- (s) nicocodeine;
- (t) nicomorphine;
- (u) normorphine;
- (v) pholcodine; and
- (w) thebacon.

(4) Hallucinogenic substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following is a hallucinogenic substance, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alpha-ethyltryptamine, also known as etryptamine, monase, alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET;

(b) alpha-methyltryptamine, also known as AMT;

(c) 4-bromo-2,5-dimethoxyamphetamine, also known as 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine, and 4-bromo-2,5-DMA;

(d) 4-bromo-2,5-dimethoxyphenethylamine, also known as 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane, alpha-desmethyl DOB, and 2C-B, Nexus;

(e) 2,5-dimethoxyamphetamine, also known as 2,5-dimethoxy-alpha-methylphenethylamine and 2,5-DMA;

(f) 2,5-dimethoxy-4-(N)-propylthiophenethylamine, also known as 2C-T-7;

(g) 3,4-methylenedioxyamphetamine;

(h) 2,5-dimethoxy-4-ethylamphetamine, also known as is DOET;

(i) 5-methoxy-N,N-diisopropyltryptamine, also known as 5-MeO-DIPT;

(j) 5-methoxy-N,N-dimethyltryptamine, also known as 5-MeO-DMT;

(k) 4-methoxyamphetamine, also known as 4-methoxy-alpha-methylphenethylamine;

(l) 5-methoxy-3,4-methylenedioxyamphetamine;

(m) 4-methyl-2,5-dimethoxyamphetamine, also known as 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine, DOM, and STP;

(n) 3,4-methylenedioxymethamphetamine, also known as MDMA;

(o) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA;

(p) N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine and N-hydroxy MDA;

(q) 3,4,5-trimethoxyamphetamine;

(r) bufotenine, also known as 3-(beta-dimethylaminoethyl)-5-hydroxyindole, 3-(2-dimethylaminoethyl)-5-indolol, N,N-dimethylserotonin, 5-hydroxy-N,N-dimethyltryptamine, and mappine;

(s) diethyltryptamine, also known as N,N-diethyltryptamine and DET;

(t) dimethyltryptamine, also known as DMT;

(u) ibogaine, also known as 7-ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepine [5,4-b] indole and tabernanthe iboga;

(v) lysergic acid diethylamide, also known as LSD;

(w) mescaline;

(x) parahexyl, also known as 3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,8,9-trimethyl-6H-dibenzo[b,d]pyran and synhexyl;

(y) peyote, meaning all parts of the plant presently classified botanically as *lophophora williamsii* lemaire, whether growing or not; the seed of the plant; any extract from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seed, or extracts;

(z) N-ethyl-3-piperidyl benzilate;

(aa) N-methyl-3-piperidyl benzilate;

(bb) psilocyn;

(cc) psilocybin

(dd) tetrahydrocannabinols, including synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, such as those listed in subsections (4)(ff)(i) (4)(dd)(i) through (4)(ff)(iii) (4)(dd)(iii). Because nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered, are included in the category as follows:

(i) delta 1 (delta 9) cis or trans tetrahydrocannabinol and its optical isomers;

(ii) delta 6 cis or trans tetrahydrocannabinol and its optical isomers; and

(iii) delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers;

(ee) ethylamine analog of phencyclidine, also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, and PCE;

(ff) pyrrolidine analog of phencyclidine, also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, and PHP;

(gg) thiophene analog of phencyclidine, also known as 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, and TCP;

(hh) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, also known as TCPy;

(ii) synthetic cannabinoids, including:

(gg) unless specifically excepted or listed in another schedule, any chemical compound chemically synthesized from or structurally similar to any material, compound, mixture, or preparation that contains any quantity of a synthetic cannabinoid found in any of the following chemical groups, or any of those groups that contain synthetic cannabinoid salts, isomers, or salts of isomers, whenever the existence of those salts, isomers, or salts of isomers is possible within the specific chemical designation, including all synthetic cannabinoid chemical analogs in the following groups:

(A) naphthoylindoles, whether or not substituted in the indole ring to any extent or the naphthyl ring to any extent;

(B) naphthylmethylinindoles, whether or not substituted in the indole ring to any extent or the naphthyl ring to any extent;

(C) naphthoylpyrroles, whether or not substituted in the pyrrole ring to any extent or the naphthyl ring to any extent;

(D) naphthylmethylinidenes, whether or not substituted in the indene ring to any extent or the naphthyl ring to any extent;

(E) acetylinindoles, whether or not substituted in the indole ring to any extent or the acetyl group to any extent;

(F) cyclohexylphenols, whether or not substituted in the cyclohexyl ring to any extent or the phenyl ring to any extent;

(G) dibenzopyrans, whether or not substituted in the cyclohexyl ring to any extent or the phenyl ring to any extent; and

(H) benzoylindoles, whether or not substituted in the indole ring to any extent or the phenyl ring to any extent;

(ii) any compound that has been demonstrated to have agonist binding activity at one or more cannabinoid receptors or is a chemical analog or isomer of a compound that has been demonstrated to have agonist binding activity at one or more cannabinoid receptors;

(iii) 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018);

(iv) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-210 or 1,1-dimethylheptyl-11-hydroxy-delta8-tetrahydrocannabinol);

(v) 2-(3-hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol (also known as CP-47,497), and the dimethylhexyl, dimethyloctyl, and dimethylnonyl homologues of CP-47,497;

(vi) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073);

(vii) 1-(2-(4-(morpholinyl)ethyl))-3-(1-naphthoyl) indole (also known as JWH-200);

(viii) 1-pentyl-3-(2-methoxyphenylacetyl)indole (also known as JWH-250);

(ix) 1-hexyl-3-(1-naphthoyl)indole (also known as JWH-019);

(x) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (also known as JWH-398);

(xi) JWH-081: 1-pentyl-3-(4-methoxy-1-naphthoyl)indole, also known as 4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone;

(xii) the following substances, except where contained in cannabis or cannabis resin, namely tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives:

(A) [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone (also known as WIN-55,212-2);

(B) 3-dimethylheptyl-11-hydroxyhexahydrocannabinol (also known as HU-243); or (C) [9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate;

(II)(jj) *Salvia divinorum*, also known as salvinorin A (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(3-furanyl)dodecahydro-6a,10b-dimethyl-4,10-dioxo-2H-naphtho[2,1-c]pyran-7-carboxylic acid methyl ester;

(mm)(kk) substituted cathinones, including any compound, except bupropion or compounds listed in another schedule, structurally derived from 2-amino-1-phenyl-1-propanone by modification in any of the following ways:

(i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;

(ii) by substitution at the 3-position with an alkyl substituent;

(iii) by substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure; and

(iv) any lengthening of the propanone chain between carbons 1 and 2 to any extent with alkyl groups, whether further substituted or not;

(nn)(ll) any compound not listed in this code, in an administrative rule regulating controlled substances or approved for use by the United States food and drug administration that is structurally derived from 2-amino-1-phenyl-1-propane by modification in any of the following ways:

(i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;

(ii) by substitution at the 3-position with an alkyl substituent;

(iii) by substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure; and

(iv) any lengthening of the propane chain between carbons 1 and 2 to any extent with alkyl groups, whether further substituted or not.

(5) (a) For the purposes of subsection (4), the term "isomer" includes the optical, positional, and geometric isomers.

(b) Subsection (4)(kk) (4)(ii) does not apply to synthetic cannabinoids approved by the United States food and drug administration and obtained by a lawful prescription through a licensed pharmacy.

(6) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) gamma-hydroxybutyric acid, also known as gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid, sodium oxybate, sodium oxybutyrate, and GHB;

(b) mecloqualone; and

(c) methaqualone.

(7) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) aminorex, also known as aminoxaphen, 2-amino-5-phenyl-2-oxazoline, and 4,5-dihydro-5-phenyl-2-oxazolamine;

(b) cathinone, also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone;

(c) fenethylamine;

(d) methcathinone, also known as 2-(methylamino)-propiophenone, alpha-(methylamino)propiophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophenone, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463, and UR1432, including its salts, optical isomers, and salts of optical isomers;

(e) 4-Methylaminorex (cis isomer), also known as U4Euh, McN-422;

(f) (levo-dextro) cis-4-methylaminorex, also known as (levo-dextro) cis-4, 5-dihydro-4-methyl-5-phenyl-2-oxazolamine;

(g) N-benzylpiperazine, also known as 1-benzylpiperazine or BZP;

(h) N-ethylamphetamine; and

(i) N,N-dimethylamphetamine, also known as N,N-alpha-trimethyl-benzeneethanamine and N,N-alpha-trimethylphenethylamine.

(8) Substances subject to emergency scheduling. Any material, compound, mixture, or preparation that contains any quantity of the following substances is included in this category:

(a) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers); and

(b) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thethylfentanyl), its optical isomers, salts, and salts of isomers).

(9) If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols listed in subsection (4) must automatically be rescheduled from Schedule I to Schedule II.

(10) Dangerous drug analogues. Unless specifically excepted or listed in another schedule, this designation includes any material, compound, mixture, or preparation defined in 50-32-101 as a dangerous drug analogue."

Section 68. Section 50-40-103, MCA, is amended to read:

"50-40-103. Definitions. As used in this part, the following definitions apply:

(1) "Bar" means an establishment with a license issued pursuant to Title 16, chapter 4, that is devoted to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the serving of food is only incidental to the service of alcoholic beverages or gambling operations. The term includes but is not limited to taverns, night clubs, cocktail lounges, and casinos.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Enclosed public place" means an indoor area, room, or vehicle that the general public is allowed to enter or that serves as a place of work, including but not limited to the following:

(a) restaurants;

(b) stores;

(c) public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in 50-40-201, and state government;

(d) trains, buses, and other forms of public transportation;

(e) health care facilities;

(f) auditoriums, arenas, and assembly facilities;

(g) meeting rooms open to the public;

(h) bars;

(i) community college facilities;

(j) facilities of the Montana university system; and

(k) public schools, as provided for in 20-1-220 and 50-40-104.

(4) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(5) "Incidental to the service of alcoholic beverages or gambling operations" means that at least 60% of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both.

(6) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

(7) "Place of work" means an enclosed room where one or more individuals work.

(8) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product and includes the use of marijuana for a debilitating medical condition as provided for in Title 50, chapter 46."

Section 69. Section 50-46-302, MCA, is amended to read:

"50-46-302. Definitions. As used in this part, the following definitions apply:

(1) "Canopy" means the total amount of square footage dedicated to live plant production at a registered premises consisting of the area of the floor, platform, or means of support or suspension of the plant.

(2) "Chemical manufacturing" means the production of marijuana concentrate.

(3) "Correctional facility or program" means a facility or program that is described in 53-1-202 and to which an individual may be ordered by any court of competent jurisdiction.

(4) "Debilitating medical condition" means:

(a) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome when the condition or disease results in symptoms that seriously and adversely affect the patient's health status;

(b) cachexia or wasting syndrome;

(c) severe chronic pain that is persistent pain of severe intensity that significantly interferes with daily activities as documented by the patient's treating physician;

(d) intractable nausea or vomiting;

(e) epilepsy or an intractable seizure disorder;

(f) multiple sclerosis;

(g) Crohn's disease;

(h) painful peripheral neuropathy;

(i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;

(j) admittance into hospice care in accordance with rules adopted by the department; or

(k) posttraumatic stress disorder

(l)(l) anxiety

(m) autism

(n) anything an opioid would be prescribed for

(o) Bipolar Disorder

(p) Depression

(q) Alzheimers

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "Dispensary" means a registered premises from which a provider or marijuana-infused products provider is approved by the department to dispense marijuana or marijuana-infused products to a registered cardholder.

(7) (a) "Employee" means an individual employed to do something for the benefit of an employer or a third person.

(b) The term includes a manager, agent, or director of a partnership, association, company, corporation, limited liability company, or organization.

(8) "Local government" means a county, a consolidated government, or an incorporated city or town.

(9) "Marijuana" has the meaning provided in 50-32-101 [section 3].

(10) "Marijuana concentrate" means any type of marijuana product consisting wholly or in part of the resin extracted from any part of the marijuana plant.

(11) "Marijuana derivative" means any mixture or preparation of the dried leaves, flowers, resin, and byproducts of the marijuana plant, including but not limited to marijuana concentrates and marijuana-infused products.

(12) (a) "Marijuana-infused product" means a product that contains marijuana and is intended for use by a registered cardholder by a means other than smoking.

(b) The term includes but is not limited to edible products, ointments, and tinctures.

(13) (a) "Marijuana-infused products provider" means a person licensed by the department to manufacture and provide marijuana-infused products for a registered cardholder.

(b) The term does not include the cardholder's treating or referral physician.

(14) "Mature marijuana plant" means a harvestable female marijuana plant that is flowering.

(15) "Paraphernalia" has the meaning provided in 45-10-101.

(16) "Person" means an individual, partnership, association, company, corporation, limited liability company, or organization.

(17) (a) "Provider" means a person licensed by the department to assist a registered cardholder as allowed under this part.

(b) The term does not include a cardholder's treating physician or referral physician.

(18) "Referral physician" means an individual who:

(a) is licensed under Title 37, chapter 3;

(b) has an established office in Montana; and

(c) is the physician to whom a patient's treating physician has referred the patient for physical examination and medical assessment.

(19) "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card.

(20) "Registered premises" means the location at which a provider or marijuana-infused products provider:

(a) has indicated that marijuana will be cultivated, chemical manufacturing will occur, or marijuana-infused products will be manufactured for a registered cardholder; or

(b) has established a dispensary for sale of marijuana or marijuana-infused products to a registered cardholder.

(21) "Registry identification card" means a document issued by the department pursuant to 50-46-303 that identifies an individual as a registered cardholder.

(22) (a) "Resident" means an individual who meets the requirements of 1-1-215.

(b) An individual is not considered a resident for the purposes of this part if the individual:

(i) claims residence in another state or country for any purpose; or

(ii) is an absentee property owner paying property tax on property in Montana.

(23) "Second degree of kinship by blood or marriage" means a mother, father, brother, sister, son, daughter, spouse, grandparent, grandchild, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent-in-law, grandchild-in-law, stepfather, stepmother, stepbrother, stepsister, stepson, stepdaughter, stepgrandparent, or stepgrandchild.

(24) "Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height and 12 inches in diameter.

(25) "Standard of care" means, at a minimum, the following activities when undertaken by a patient's treating physician or referral physician if the treating physician or referral physician is providing written certification for a patient with a debilitating medical condition:

- (a) obtaining the patient's medical history;
- (b) performing a relevant and necessary physical examination;
- (c) reviewing prior treatment and treatment response for the debilitating medical condition;
- (d) obtaining and reviewing any relevant and necessary diagnostic test results related to the debilitating medical condition;
- (e) discussing with the patient and ensuring that the patient understands the advantages, disadvantages, alternatives, potential adverse effects, and expected response to the recommended treatment;
- (f) monitoring the response to treatment and possible adverse effects; and
- (g) creating and maintaining patient records that remain with the physician.

(26) "Testing laboratory" means a qualified person, licensed by the department, who meets the requirements of 50-46-311 and:

- (a) provides testing of small samples of marijuana and marijuana-infused products; and
- (b) provides information regarding the chemical composition, the potency of a sample, and the presence of molds or pesticides in a sample.

(27) "Treating physician" means an individual who:

- (a) is licensed under Title 37, chapter 3;
- (b) has an established office in Montana; and
- (c) has a bona fide professional relationship with the individual applying to be a registered cardholder.

(28) (a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant and any marijuana derivatives that are appropriate for the use of marijuana by an individual with a debilitating medical condition.

(b) The term does not include the seeds, stalks, and roots of the plant.

(29) "Written certification" means a statement signed by a treating physician or referral physician that meets the requirements of 50-46-310 and is provided in a manner that meets the standard of care."

Section 70. Section 80-18-111, MCA, is amended to read:

"80-18-111. Affirmative defense for exceeding limits on possession or cultivation production of marijuana. (1) It is an affirmative defense to a prosecution for the possession or cultivation of marijuana under 45-9-102, 45-9-103, and 45-9-110 exceeding the limits on personal possession or production under [section 34] that:

- (a) the defendant was growing industrial hemp pursuant to this part;
- (b) the defendant had valid applicable controlled substances registrations from the United States department of justice, drug enforcement administration; and
- (c) the defendant fully complied with all of the conditions of the controlled substances registration.

(2) This section is not an affirmative defense to a charge of criminal sale or distribution of marijuana."

NEW SECTION. Section 71. Repealer. The following section of the Montana Code Annotated is repealed:
50-46-340. Forfeiture.

NEW SECTION. Section 72. Codification instruction. (1) [Sections 1 through 40] are intended to be codified as an integral part of Title 16, and the provisions of Title 16 apply to [sections 1 through 40].

(2) [Sections 41 through 50] are intended to be codified as an integral part of Title 15, chapter 64, and the provisions of Title 15, chapter 64, apply to [sections 41 through 50].

(3) [Sections 51 through 55] are intended to be codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections 51 through 55].

NEW SECTION. Section 73. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 74. Effective date. [This act] is effective on passage and approval.
- END -